HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 429 OF 2004

M/s Orchid Biomedical Systems
a registered partnership firm
with its office at Gitanjali,
Tulip Block, Dr.Antonio Do
Rego Bagh, Alto Santa Cruz,
Bambolim Complex, Post office,
Goa. ...Petitioner

Versus

1. Union of India, through its
Secretary, Ministry of Health,
Nirman Bhavan, New Delhi,

2. M/s Hindustan Latex Ltd.,
(Govt. of India Undertaking),
Procurement & Consultancy
Service Division, K-39, Lajpat
Nagar- II, New Delhi - 110 024, and

3. M/s Span Diagnostics Pvt. Ltd.
173 P, New Industrial Estate,
Uthna, Surat, Gujarat 394 210 ...Respondents

Mr. S. N. Joshi, advocate for the petitioner.

Mr. E. P. Badrinarayanan, Addl. Central Govt. Standing Counsel for respondent no.1.

Mr. C. N. Sreekumar with Mr. M. S. Sonak, advocates for respondent no.2.

Mr. S. S. Kantak, advocate for respondent no.3.

CORAM : A. P. LAVANDE &
N. A. BRITTO, JJ.

DATE : 28th March, 2005.

ORAL ORDER

Heard Mr. Joshi, learned counsel for the petitioner, Mr. Badrinarayanan for respondent no.1, Mr. Sonak for respondent no.2 and Mr. Kantak, for respondent no.3.

2. On 14th April, 2004, respondent no.2 invited bids for supply of Rapid Diagnostic Test Kit for Malaria. On 18th May, 2004, the petitioner submitted the bid pursuant to the invitation given by respondent no.2. By communication dated 17th August, 2004, respondent no.2 informed the petitioner that the petitioner's bid was considered and was determined as non-responsive by the competent authority. Alongwith the communication the price bids submitted by the petitioner as well as the security furnished were returned. By communication dated 20th August, 2004 the petitioner protested against the action of the respondent and sought reconsideration of the issue. Since respondent no.2 did not accede to the request of the petitioner, the petitioner filed the above petition seeking the following reliefs:-

> (a) Issue a writ of Certiorari or any other writ, order or direction in the nature of Certiorari and quash and set aside the Impugned Communication dated 17/8/2004.

> (b) Issue a writ of mandamus or any other writ, order or direction in the nature of mandamus to the respondent no.2 to consider the bids submitted by the petitioner alongwith the other eligible bidders.

Thereafter, the petitioner sought amendment of the prayer clause and prayer clause (a1) was added pursuant to the Order dated 15th February, 2005, passed by this Court. The said prayer reads as under:-

> (a1) Issue a Writ of Certiorari or any other writ, order or direction in the nature of certiorari and quash and set aside the approval for placement of supply order dated 7/10/2004 as also the notification of award dated 19/10/2004.

The interim relief sought for by the petitioner was not granted. The petition was adjourned from time-to-time. Respondent no.2 filed affidavit opposing admission of the petition. According to respondent no.2, the petitioner was not entitled to the bid on account of non-compliance of certain conditions. According to respondent no.2, respondent no.3 was the only bidder who complied with the conditions and, as such, was given the order for supply of the diagnostic test kits. According to the respondent, as per the recommendation of the Bid Evaluation Committee, approval for placement of supply order was

received from the office of National Vector Borne Disease Control Programme vide their letter dated 7th October, 2004. Thereafter, Notification of Award to the successful bidder i.e. respondent no.3, was issued on 19th October, 2004 and as per the contract, the entire quantity had to be delivered to ten consignees, spread all over India within 90 days from the date of Notification of Award i.e. by 19th January, 2005. When the petition was called out for hearing on admission, the learned counsel appearing for respondents no.2 and 3 have submitted that the supply has been already made pursuant to Notification of award dated 19th October, 2004.

3. Mr. Joshi, learned counsel appearing for the petitioner, has conceded that the reliefs sought in the petition are no more available to the petitioner. However, the learned counsel submitted that the petitioner has been wrongly disqualified and the bid offered by the petitioner has been wrongly held to be non-responsive. According to the learned counsel, invitation of bids by respondent no.2 is a continuous process and, therefore, this Court should find out if the entire process of awarding the tender to respondent no.3 has been correctly undertaken and lay down guidelines for the future. The learned counsel appearing for the respondents have rightly submitted that in exercise of jurisdiction under Articles 226 and 227 of the Constitution of India, this Court should not deal with an academic issue

since, admittedly, reliefs sought for by the petitioner are no more available. We find considerable force in the submission of the learned counsel for the respondents. We are not inclined to take up the exercise of finding out whether the decision-making process has been correctly undertaken as suggested by the learned counsel appearing for the petitioner, in as much as admittedly no reliefs can be granted at this stage to the petitioner. On this count, we are of the view that the petition deserves to be rejected. We deem it appropriate not to decide the matter on merits since no reliefs as prayed for can be granted to the petitioner.

4. For the reasons stated above, we find that this is not a fit case to interfere and, as such, the petition is rejected. The tender papers submitted by respondent no.2, pursuant to Order dated 31st January, 2005, be returned to respondent no.2.

A. P. LAVANDE, J.

N. A. BRITTO, J.

mc.